IN THE COURT OF GENERAL SESSIONS FOR DAVIDSON COUNTY TENNESSEE

DIVISION 2

2019 JAN -7 AM 9:44

STATE OF TENNESSEE)

VS.) NO. GS869169

)

ANDREW DELKE)

ORDER BINDING CASE OVER TO THE GRAND JURY

The duty of this Court is not to determine guilt or innocence. It is to find whether the State has demonstrated probable cause to believe that a crime has been committed and that Mr. Delke committed it.

The state has shown that Mr. Delke followed a white Chevrolet after it deferred to his police vehicle at an intersection. He ran the tag and the car was not shown to have been stolen. Later the white vehicle failed to stop in response to Mr. Delke's activation of his blue lights.

Mr. Delke observed a second white car, mistaking it for the first, drive into the John Henry Hale Apartments and enter the driveway. When he first observed the decedent, Mr. Hambrick was on foot. The Defendant did not know whether Mr. Hambrick had been in the white car he had tried to stop. Nor did Mr. Delke have knowledge of Mr. Hambrick's criminal history or even his name. In his TBI interview he could not describe any crime he had observed Mr. Hambrick commit or for which he was suspected.

Mr. Hambrick began running. While this was suspicious and such behavior may have justified Delke in interviewing him, the mere act of fleeing is simply not a crime in the absence of other facts. It certainly did not justify the use of lethal force.

As a matter of law, the use of lethal force to apprehend a fleeing suspect only thought guilty of a misdemeanor is a deprivation of the Constitutional Rights of the person in flight. Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694 (S.Ct. 1985).

In this case, the man running from Mr. Delke was unknown to him. The officer did not pursue Mr. Hambrick to apprehend him for any crime. His pursuit on foot of Mr. Hambrick was based on mere suspicion.

The defense ably presented to the court evidence to justify the discharge of Mr. Delke's service weapon. Throughout the preliminary hearing the defense team asserted that Mr. Hambrick turned and pointed a gun at him on at least two occasions. The proof viewed by the court is insufficient to support these contentions. This evidence centers primarily on behavior alleged to have occurred during the portion of the pursuit not captured on video.

The Court is constrained to observe that this contention might have been demonstrated or disproved had Mr. Delke worn a functioning body camera. In the absence of such proof the defense submitted evidence largely based on supposition and conjecture. In Tennessee, evidence that a fact is "possible" is no evidence at all. Lindsey v. Miami Development Corp., 689 SW 2d 856 (S. Ct. 1985; Miller v. Choo Choo Partners LP., 73 S.W. 3d 897 (Ct. App. 2001.

Mr. Delke appropriately exercised his Fifth Amendment privilege not to have testified on his own behalf. The Court, of course, will draw no adverse inferences because of that decision. Yet it remains that his version of the events has not been tested by cross examination and no conclusion may be reached regarding his personal credibility.

The Court did not find convincing the testimony that the actions attributed to the decedent more probably than not occurred in the approximate two second time span not captured in the video while Mr. Hambrick appeared to have been running as fast as he could.

It is "possible" that Mr. Hambrick turned and pointed his weapon at Mr. Delke, but this contention has not been supported by the video evidence and strikes the Court as improbable.

While this evidence was well presented by able counsel and might be found by a juror to constitute reasonable doubt, the Court finds that it does not refute the conclusion based upon the lower evidentiary standard of probable cause.

The video showed that at the time Mr. Delke stopped and assumed his firing position. Mr. Hambrick was running from him at a high rate of speed. It appeared to the Court in close examination of the video that Mr. Hambrick took at least four long strides away from the officer prior to the discharge of his weapon. He was shot from the back while fleeing. This evidence did not demonstrate that Mr. Delke was in imminent danger for his life at that time.

The defense argued that the decedent could have been a threat to unidentified persons at a later time. But the defense also claimed that Mr. Delke exercised prudence in observing that no other persons were in view, and that a concrete wall or building was beyond Mr. Hambrick in his line of fire.

The defense also relied on T.C.A. 39-11-620. Section (a) provides that in order to justify the use force the individual must be suspected of a criminal act.
Mr. Hambrick was not. Subsection (b) is inapplicable because the proof demonstrated no belief that Mr. Hambrick had committed a felony involving the infliction of serious bodily harm; and, the proof was insufficient to show that he posed a threat of serious bodily injury at the time the weapon was discharged.

The Court is mindful of the fact that police work is stressful; that officers must make split second decisions and often act in a heroic manner. This does not justify the pursuit of a man suspected of no crime following the trailing of a car not apparently involved in any criminal activity. The decision to pursue Mr. Hambrick on foot seems from this proof to have been prompted by mere assumptions. While this behavior was sufficient to cause Mr. Delke to exercise caution for his own safety, it did not justify the foot pursuit and the killing of a man suspected of no crime known to the defendant at that time.

Based upon the evidence there is sufficient proof to find probable cause to believe that Mr. Delke committed Criminal Homicide pursuant to T.C.A. 39-13-201. Therefore, Mr. Delke is bound over to the Davidson County Grand Jury. The bond will remain in place.

This the 7th Day of January, 2019.

Melissa Blackburn
Presiding Judge General Sessions Court

CERTIFICATE OF SERVICE

Melissa Blackburn
Presiding Judge General Sessions Court

I certify that a true and exact copy of this Order has been delivered this the 7th day of January, 2019 to the following:

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